



# Right to Contract

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## Introduction

Contracts are the bedrock of all business. And the right to contract freely is imperative. Put simply, a contract is an agreement between two parties with obligations for each party to fulfill. This agreement creates a legal relationship between the parties.

The legal relationship and obligations are primarily defined within the contract. However, there are limitations and duties created by statute. For example, Oklahoma's 'right to work' constitutional provision, [Article 23 Section 1A](#), prohibits union membership as a condition of employment.

These legal relationships can become complex when there are layers of contracts between the primary business and the worker. Top industries in Oklahoma use contractors and subcontractors for work that they are not typically in the business of accomplishing. These contracts typically include an indemnity clause.

Indemnity clauses "save another from a legal consequence of the conduct of one of the parties, or of some other person." 15 O.S. 421 (2024). Put another way, a contract between two parties can wash one party of liability for actions or events specified in the contract.

## Problem

A recent Oklahoma Supreme Court case threatens the freedom businesses have to contract with the inclusion of an indemnity clause for negligence torts within the worker's compensation system.

In *Knox v. Oklahoma Gas and Electric Co.* 2024 OK 37, 549 P.3d 1260, the surviving spouse of a subcontractor's employee sued for tort liability after a worker's compensation award. There are three contracts in this case, each with an indemnity clause. First between OGE and SunPower; second between SunPower and Moss; and third between Moss and BJ's Oilfield. An appeal by SunPower brought the case to the Supreme Court over the issue of whether the indemnity clause in the Moss and BJ's Oilfield contract limits the liability of SunPower as a beneficiary of the clause. The Court held that businesses can create legal relationships with others that indemnify parties, but that the liability cannot be for the same injury used in a worker's compensation award.

This ruling means that an injured person working for a subcontractor receiving a worker's compensation award can also hold the contractor liable for the same injury. It creates uncertainty and disruption to the private right to contract.

## **Solution**

There are two approaches Oklahoma could adopt to break the chain of liability to the contractor.

Lawmakers can consider explicitly prohibiting the limitation of recovery from an indemnity agreement within the Workers' Compensation Act in Title 85A. This would isolate the issue of the holding, making clear that a workers' compensation award and suit is between the employer and employee, rather than the employee and contractor.

Alternatively, Oklahoma can further protect businesses' right to contract by allowing contractors to cover subcontractors' workers' compensation insurance while on the job. While this would place liability on the contractor, it also provides the clarity and predictability of liability. Moreover, this would be an affirmative choice by both the contractor and subcontractor to include such an agreement in their contract, further promoting the right to contract.

